

No. 1995-24 (SS1)

AN ACT

SB 7

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for sexually violent offenders.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Chapter 97 of Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a subchapter to read:

SUBCHAPTER H
REGISTRATION OF SEXUAL OFFENDERS

Sec.

- 9791. Legislative findings and declaration of policy.
- 9792. Definitions.
- 9793. Registration of certain offenders for ten years.
- 9794. Designation of sexually violent predators.
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§ 9791. Legislative findings and declaration of policy.

(a) Legislative findings.—It is hereby determined and declared as a matter of legislative finding:

(1) If the public is provided adequate notice and information about sexually violent predators and certain other offenders, the community can develop constructive plans to prepare themselves and their children for the offender's release. This allows communities to meet with law enforcement to prepare and obtain information about the rights and responsibilities of the community and to provide education and counseling to their children.

(2) These sexually violent predators pose a high risk of engaging in further offenses even after being released from incarceration or commitments and that protection of the public from this type of offender is a paramount governmental interest.

(3) The penal and mental health components of our justice system are largely hidden from public view and lack of information from either may result in failure of both systems to meet this paramount concern of public safety.

(4) Overly restrictive confidentiality and liability laws governing the release of information about sexually violent predators have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks to public safety.

(5) Persons found to have committed such an offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.

(6) Release of information about sexually violent predators to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals.

(b) Declaration of policy.—It is hereby declared to be the intention of the General Assembly to protect the safety and general welfare of the people of this Commonwealth by providing for registration and community notification regarding sexually violent predators who are about to be released from custody and will live in or near their neighborhood. It is further declared to be the policy of this Commonwealth to require the exchange of relevant information about sexually violent predators among public agencies and officials and to authorize the release of necessary and relevant information about sexually violent predators to members of the general public as a means of assuring public protection and shall not be construed as punitive.

§ 9792. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Board.” The State Board to Assess Sexually Violent Predators.

“Mental abnormality.” A congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

“Municipality.” A city, borough, incorporated town or township.

“Offender.” An individual who is:

(1) designated a sexually violent predator under the provisions of this subchapter; or

(2) required to register under section 9793(b) (relating to registration of certain offenders for ten years).

“Predatory.” An act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

“Sexually violent offense.” Any criminal offense specified in section 9793(b) (relating to registration of certain offenders for ten years).

“Sexually violent predator.” A person who has been convicted of a sexually violent offense as set forth in section 9793(b) (relating to registration of certain offenders for ten years) and who is determined to be a sexually violent predator under section 9794(e) (relating to designation of sexually violent predators) due to a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses. § 9793. Registration of certain offenders for ten years.

(a) Registration.—A person convicted of any of the offenses set forth in subsection (b) shall be required to register a current address with the Pennsylvania State Police upon release from incarceration, upon parole from a State or county correctional institution or upon the commencement of a sentence of intermediate punishment or probation. The period of registration shall be ten years.

(b) Persons required to register.—

(1) Persons convicted of any of the following offenses that are classified as a felony and involve a victim who is a minor:

18 Pa.C.S. § 2901 (relating to kidnapping) except by a parent.

18 Pa.C.S. § 3121 (relating to rape).

18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

18 Pa.C.S. § 5902(b) (relating to prostitution and related offenses).

18 Pa.C.S. § 5903(a)(3), (4), (5) or (6) (relating to obscene and other sexual materials and performances).

(2) Persons convicted of any of the following offenses regardless of the age of the victim:

18 Pa.C.S. § 3121.

18 Pa.C.S. § 3123.

18 Pa.C.S. § 3125.

18 Pa.C.S. § 3128(a) and (b) (relating to spousal sexual assault).

(c) Registration information.—The Pennsylvania State Police shall provide the information obtained under this section and sections 9795 (relating to registration of offenders) and 9796 (relating to verification of residence) to the chief law enforcement officer of the police department of the municipality in which the offender will reside. In addition, the Pennsylvania State Police shall provide this officer with the address at which the offender will reside following his release from incarceration, parole or probation.

§ 9794. Designation of sexually violent predators.

(a) Order for assessment.—After conviction, but before sentencing, a court shall order a person convicted of a sexually violent offense specified in section 9793(b) (relating to registration of certain offenders for ten years) to be assessed by the board.

(b) **Presumption.**—An offender convicted of any offense set forth in section 9793(b) shall be presumed by the board and the court to be a sexually violent predator. This presumption may be rebutted by the offender by clear and convincing evidence at a hearing held in accordance with subsection (e).

(c) **Assessment.**—The board shall conduct an assessment of the offender to determine if the offender is a sexually violent predator. Such an assessment shall include, but not be limited to, such factors as:

- (1) Age of the offender.
- (2) Offender's prior criminal record, sexual offenses as well as other offenses.
- (3) Age of the victim.
- (4) Whether the offense involved multiple victims.
- (5) Use of illegal drugs by the offender.
- (6) Whether the offender completed any prior sentence and whether the offender participated in available programs for sexual offenders.
- (7) Any mental illness or mental disability of the offender.
- (8) The nature of the sexual contact with the victim and whether the sexual contact was part of a demonstrated pattern of abuse.
- (9) Whether the offense included a display of unusual cruelty by the offender during the commission of the crime.
- (10) Any behavioral characteristics that contribute to the offender's conduct.

(d) **Submission of report by board.**—The board shall submit a written report containing its assessment to the court no later than 30 days from the date of conviction of the defendant.

(e) **Court review of findings.**—Upon receipt of the board's report, the court shall determine if the offender is a sexually violent predator. This determination shall be made based on evidence presented at a hearing held prior to sentencing and before the trial judge. The offender and district attorney shall be given notice of the hearing and an opportunity to be heard, the right to call witnesses, the right to call expert witnesses and the right to cross-examine witnesses. In addition, the offender shall have the right to counsel and to have a lawyer appointed to represent him if he cannot afford one. After a review of all evidence presented at this hearing, the court may determine whether the presumption arising under subsection (b) has been rebutted and shall set forth this determination on the sentencing order.

(f) **Subsequent board review.**—No sooner than one year prior to release from a State or county correctional institution, or in five-year intervals thereafter, an offender designated as a sexually violent predator may petition the court with original jurisdiction in the matter for reconsideration of the determination. The court may review the determination and request a new report by the board. The court may enter an order terminating the designation in which case the court shall notify the Pennsylvania State Police.

§ 9795. Registration of offenders.

(a) Registration of sexually violent predators.—A sexually violent predator shall be required to register all current addresses with the Pennsylvania State Police upon release from incarceration, upon parole from a State or county correctional institution or upon the commencement of a sentence of intermediate punishment or probation. The registration shall continue unless the court determines the person is no longer a sexually violent predator as provided in section 9794(f) (relating to designation of sexually violent predators).

(b) Court information for all offenders.—The sentencing court shall inform offenders designated in section 9793 (relating to registration of certain offenders for ten years) and sexually violent predators designated in subsection (a) at the time of sentencing of the provisions of this subchapter. The court shall:

(1) Specifically inform the offender of the duty to register and obtain the information required for each registration.

(2) Specifically inform the offender of the duty to inform the Pennsylvania State Police within ten days if the offender changes residence.

(3) Specifically inform the offender of the duty to register with a new law enforcement agency if the offender moves to another state no later than ten days after establishing residence in another state.

(4) Order the fingerprints and photograph of the person to be provided to the Pennsylvania State Police upon sentencing.

(5) Require the offender to read and sign a form stating that the duty to register under this subchapter has been explained. Where the offender is incapable of reading, the court shall certify the duty to register was explained to the offender and the offender indicated an understanding of the duty.

(c) Notice by correctional facility and paroling authorities.—When the offender is to be released from incarceration or paroled from a State or county correctional facility, the prison official of the State or county correctional facility shall no later than ten days prior to the release or parole of the offender again provide the offender with notice of the duty to register with the Pennsylvania State Police under this subchapter.

(d) Penalty.—Any offender who fails to register with the Pennsylvania State Police as required in this section commits a felony of the third degree.

§ 9796. Verification of residence.

(a) Quarterly verification.—The Pennsylvania State Police shall verify the residence of sexually violent predators every 90 days through the use of a nonforwardable verification form to the last reported address. The form shall be returned by the offender within ten days.

(b) Annual verification.—The Pennsylvania State Police shall verify the residence of offenders designated in section 9793 (relating to registration of

certain offenders for ten years) annually through the use of a residence verification form. The form shall be returned by the offender within ten days.

(c) Notification of law enforcement agencies of change in address.—A change of address of an offender required to register under this subchapter reported to the Pennsylvania State Police shall be immediately reported by the Pennsylvania State Police to the appropriate law enforcement agency having jurisdiction of the offender's new place of residence. The Pennsylvania State Police shall, if the offender changes residence to another state, notify the law enforcement agency with which the offender must register in the new state.

(d) Failure to provide verification.—Where any offender fails to provide verification of residence within the ten-day period as set forth in this section, the Pennsylvania State Police shall immediately notify the municipal police department of the offender's last verified residence. The local municipal police shall locate the offender and arrest him for violating this section. The Pennsylvania State Police shall assume responsibility for locating the offender and arresting him in jurisdictions where no municipal police jurisdiction exists. The Pennsylvania State Police shall assist any municipal police department requesting assistance with locating and arresting an offender who fails to verify his residence.

(e) Penalty.—Any offender who fails to verify his residence as required in this section commits a felony of the third degree.

§ 9797. Victim notification.

(a) Duty to inform victim.—

(1) Where the offender is determined to be a sexually violent predator by a court under section 9794(e) (relating to designation of sexually violent predators), the local municipal police department or the Pennsylvania State Police where no municipal police jurisdiction exists shall give written notice to the offender's victim when the offender registers initially and when he notifies the Pennsylvania State Police of a change of address. This notice shall be given within 72 hours after the offender registers or notifies the Pennsylvania State Police of a change of address. The notice shall contain the offender's name and the address or addresses where he resides.

(2) A victim may terminate the duty to inform set forth in paragraph (1) by providing the local municipal police department or the Pennsylvania State Police where no local municipal police department exists with a written statement releasing that agency from the duty to comply with this section as it pertains to that victim.

(b) Where an offender is not designated as a sexually violent predator.—Where the offender is not determined to be a sexually violent predator by a court under section 9794(e), the offender's victim shall be notified in accordance with section 479.3 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

§ 9798. Other notification.

(a) By municipality's chief law enforcement officer.—The chief law enforcement officer of the police department of the municipality where a sexually violent predator lives shall be responsible for providing written notice as required under this section.

(1) The notice shall contain:

- (i) The name of the convicted sexually violent predator.
- (ii) The address or addresses at which he resides.
- (iii) The offense for which he was convicted.
- (iv) A statement that he has been designated by court order as a sexually violent predator, which designation has or has not been terminated as of a date certain.

(2) The notice shall not include any information that might reveal the victim's name, identity and residence.

(b) To whom written notice is provided.—The chief law enforcement officer shall provide written notice, under subsection (a), to the following persons:

- (1) Neighbors of the sexually violent predator.
- (2) The director of the county children and youth service agency of the county where the sexually violent predator resides.
- (3) The superintendent of each school district and the equivalent official for private and parochial schools enrolling students up through grade 12 in the municipality.
- (4) The director of each licensed day care center and licensed preschool program in the municipality.
- (5) The president of each college, university and community college located within 1,000 feet of a sexually violent predator's address.

(c) Urgency of notification.—The municipal police department's chief law enforcement officer shall provide notice within the following time frames:

(1) To neighbors, notice shall be provided within 72 hours after information of the sexually violent predator's release date and address has been received by the chief law enforcement officer. Notwithstanding the provisions of subsections (a) and (b), verbal notification may be used if written notification would delay meeting this time requirement.

(2) To the persons specified in subsection (b)(2), (3), (4) and (5), notice shall be provided within seven days after the chief law enforcement officer receives information regarding the sexually violent predator's release date and address.

(d) Public notice.—All information provided in accordance with subsection (a) shall be available, upon request, to the general public.

§ 9799. Immunity for good faith conduct.

The following entities shall be immune from liability for good faith conduct under this section:

- (1) The Pennsylvania State Police and local law enforcement agencies and employees of law enforcement agencies.

- (2) District attorneys and their agents and employees.
- (3) Superintendents, administrators, teachers and employees of any public, private or parochial school.
- (4) Directors and employees of county children and youth agencies.
- (5) Presidents or similar officers of universities and colleges, including community colleges.
- (6) The Pennsylvania Board of Probation and Parole and its agents and employees.
- (7) Directors of licensed day care centers and directors of licensed preschool programs.

§ 9799.1. Duties of Pennsylvania State Police.

The Pennsylvania State Police shall:

- (1) Create and maintain a State registry of offenders pursuant to section 9793 (relating to registration of certain offenders for ten years).
- (2) In consultation with the Office of Attorney General and the Pennsylvania Board of Probation and Parole, promulgate guidelines necessary for the general administration of this subchapter.
- (3) Write regulations regarding neighbor notification of the current address of sexually violent predators.
- (4) Notify, within 72 hours of receiving the offender's registration, the chief law enforcement officer of the police department having primary jurisdiction of the municipality in which an offender resides of the fact that the offender has been registered with the Pennsylvania State Police pursuant to sections 9795 (relating to registration of offenders) and 9796 (relating to verification of residence).
- (5) In consultation with the Department of Education and the Pennsylvania Board of Probation and Parole, promulgate guidelines directing licensed day-care centers, licensed preschool programs, schools, universities and colleges, including community colleges, on the proper use and administration of information received under section 9797 (relating to victim notification).
- (6) Immediately transfer the information received from the Pennsylvania Board of Probation and Parole under section 9799.2(2) and (3) (relating to duties of Pennsylvania Board of Probation and Parole) and the fingerprints of the sexually violent predator to the Federal Bureau of Investigation.

All guidelines and regulations promulgated under this section shall be published in the Pennsylvania Bulletin no later than January 1, 1996.

§ 9799.2. Duties of Pennsylvania Board of Probation and Parole.

The Pennsylvania Board of Probation and Parole shall:

- (1) Create a notification form which will inform State and county prison and probation and parole personnel how to inform offenders required to register under this subchapter of their duty under the law.
- (2) Obtain the following information regarding offenders:
 - (i) Name, including any aliases.

(ii) Identifying factors.

(iii) Anticipated future residence.

(iv) Offense history.

(v) Documentation of any treatment received for the mental abnormality or personality disorder.

(3) Immediately transmit the information in paragraph (2) to the Pennsylvania State Police for immediate entry into the State registry of sexual offenders and the criminal history record of the offender as provided in 18 Pa.C.S. Ch. 91 (relating to criminal history record information).

§ 9799.3. Board.

(a) *Composition.*—The State Board to Assess Sexually Violent Predators shall be composed of three persons, one psychiatrist, one psychologist and one criminal justice expert, each of whom has a minimum of ten years of experience and specialized training in the behavior and treatment of sex offenders.

(b) *Appointment.*—The Governor shall appoint the psychiatrist and psychologist board members. The Attorney General shall appoint the criminal justice expert. All appointments shall be made within 30 days of the effective date of this section.

(c) *Term of office.*—Members of the board shall serve four-year terms.

(d) *Compensation.*—The members of the board shall be compensated at a rate of \$125 per day and receive reimbursement for their actual and necessary expenses while performing the business of the board. The chairman shall receive \$500 additional compensation per annum.

(e) *Staff.*—Support staff for the board shall be provided by the Pennsylvania Board of Probation and Parole.

§ 9799.4. Sexually violent predators.

(a) *Lifetime parole; counseling.*—Notwithstanding any other provision of law to the contrary, a person designated as a sexually violent predator under this subchapter shall remain on lifetime parole when released from a State or county correctional facility unless the court determines the person is no longer a sexually violent predator under section 9794(f) (relating to designation of sexually violent predators). The sexually violent predator shall be required to attend at least monthly counseling sessions in a program approved by the board and be financially responsible for all fees assessed from such counseling sessions. If the sexually violent predator can prove to the satisfaction of the court that that person cannot afford to pay for the counseling sessions, that person shall still attend the counseling sessions and the parole office shall pay the requisite fees.

(b) *Mandatory sentence.*—Notwithstanding any other provision of law to the contrary, when a person who has been designated as a sexually violent predator is convicted of a subsequent sexually violent offense, the mandatory sentence shall be life imprisonment. Should a previous conviction be vacated and an acquittal or final discharge entered subsequent to imposition of

sentence under this section, the offender shall have the right to petition the sentencing court for reconsideration of sentence if this section would not have been applicable except for the conviction which was vacated.

(c) Authority of court in sentencing.—There shall be no authority in any court to impose on an offender to which this section is applicable any lesser sentence than provided for in subsection (b), to place such offender on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.

(d) Appeal by Commonwealth.—If a sentencing court refuses to apply this section when it is applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for the imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

§ 9799.5. Exemption from notification.

Nothing in this subchapter shall be construed as imposing a duty upon a person licensed under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, or an employee thereof to disclose any information regarding an offender required to register under this act.

Section 2. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 3. The provisions of this act shall be applicable as follows:

(1) All offenders convicted of an offense set forth in 42 Pa.C.S. § 9793(b) before the effective date of this section who remain under the jurisdiction of the Pennsylvania Board of Probation and Parole or the Department of Corrections shall be subject to the provisions of this act, with the exception of 42 Pa.C.S. §§ 9794, 9795(a), 9796(a), 9797, 9798 and 9799.4, which relate to sexually violent predators.

(2) All offenders convicted of an offense set forth in 42 Pa.C.S. § 9793(b) committed on or after the effective date of this section shall be subject to all provisions of this act.

Section 4. This act shall take effect as follows:

(1) The addition of 42 Pa.C.S. §§ 9791, 9792, 9799.1, 9799.2 and 9799.3 shall take effect immediately.

- (2) This section shall take effect immediately.
- (3) The remainder of this act shall take effect in 180 days.

APPROVED—The 24th day of October, A.D. 1995.

THOMAS J. RIDGE